

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

AARON GENE DAVIS,

Plaintiff,

v.

CDCR, et al.,

Defendants.

Case No. 1:21-cv-1769 JLT HBK (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DISMISSING THE  
ACTION WITHOUT PREJUDICE, AND  
DIRECTING THE CLERK OF COURT TO  
CLOSE THE CASE

(Doc. 26)

Aaron Gene Davis filed this action, seeking to hold the defendants liable for violations of his civil rights while incarcerated at North Kern State Prison. (Docs. 7, 23.) The magistrate judge screened the amended complaint pursuant to 28 U.S.C. § 1915A and found Plaintiff stated a cognizable claim for excessive force, but his other claims were not cognizable. (Doc. 23.) The magistrate judge granted Plaintiff the opportunity to proceed with his cognizable claim or file an amended complaint. (*Id.* at 1, 9.) The magistrate judge informed Plaintiff that if he failed to comply with the order, then dismissal would be recommended. (*Id.* at 10.) After Plaintiff failed to respond to the screening order, the magistrate judge issued an order to Plaintiff to show cause why the action should be dismissed. (Doc. 25.) Again, Plaintiff failed to respond.

After Plaintiff failed to respond to the order to show cause, the magistrate judge found Plaintiff failed to comply with the Court's order and failed to prosecute the action. (Doc. 26 at 2.) In finding terminating sanctions were appropriate, the magistrate judge considered the factors

1 identified by the Ninth Circuit in *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).  
2 (*Id.* at 3-4.) The magistrate judge found the factors weighed in favor of termination, and  
3 recommended the action be dismissed without prejudice. (*Id.* at 5.)

4 The Court served the Findings and Recommendations on Plaintiff and notified him that  
5 any objections were due within 14 days. (Doc. 26 at 5.) The Court advised him that the “failure  
6 to file objections within the specified time may result in the waiver of certain rights on appeal.”  
7 (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Plaintiff did not file  
8 objections, and the time to do so has passed.

9 According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case.  
10 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations  
11 are supported by the record and proper analysis. Thus, the Court **ORDERS**:

12 1. The Findings and Recommendations filed on April 17, 2024 (Doc. 26) are  
13 **ADOPTED** in full.  
14 2. The action is **DISMISSED** without prejudice.  
15 3. The Clerk of Court shall close this case.

16 IT IS SO ORDERED.  
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18 Dated: May 21, 2024

  
UNITED STATES DISTRICT JUDGE

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